



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Henrico County and
MEB Haymes Joint Venture LLC
(Cobbs Creek Reservoir Project)**

**Virginia Water Resources and Wetlands
Protection Program Permit No. WP050852;
Construction Stormwater General Permit No. VAR10I703**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48 between the State Water Control Board, Henrico County and MEB Haymes Joint Venture LLC (hereinafter referred to as "JV") regarding the Cobbs Creek Reservoir Project located at 1617 Columbia Road; Latitude 37.730556 / 37° 43' 50.0016" and Longitude - 78.190556 / -78° 11' 26.0016" in Cumberland County, Virginia (hereinafter referred to as the "Property" or "Facility"), for the purpose of resolving certain violations of the State Water Control Law and applicable permit requirements and/or regulations. Where appropriate, Henrico County and JV are sometimes referred to collectively herein as the "Responsible Parties."

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 VPDES Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was

issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014. The General Permit expired on June 30, 2019.

2. “2019 VPDES Permit” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019. The General Permit expires on June 30, 2024.
3. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. “Construction Activity” means any clearing, grading or excavating resulting in land disturbance of equal to or great than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or great than one acre.
5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. “Discharge” means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
8. "Fill material" means any pollutant that replaces portions of surface water with dry land or that raises the bottom elevation of a surface water for any purpose.
9. “Henrico County” is a governing “locality” as that term is defined by Va. Code § 1-221 *et. Seq.*, Henrico County is a “person” within the meaning of Va. Code § 62.1-44.3.
10. “Impacts” means results caused by those activities specified in §62.1-44.15:20A of the Code of Virginia.
11. “MEB Haymes Joint Venture LLC” or “JV” is a domestic business entity with its principle place of business at 4016 Holland Blvd in Chesapeake, Virginia. JV is a “person” within the meaning of Va. Code § 62.1-44.3.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.

14. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
15. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
16. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
17. "Property" or "Facility" means the Cobbs Creek Reservoir Project in Cumberland County, Virginia.
18. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
19. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
20. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural condition.
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
22. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.

23. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
24. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
25. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
29. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
30. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
31. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. The Cobbs Creek Reservoir Project (“Project”) is a large earth-moving project in Cumberland County with limits of disturbance encompassing over 1,700 acres of land near Columbia, Virginia. In development since 2002 with targeted completion in 2025, the Project reaches from the James River to the entire drainage basin of Cobbs Creek. The Project involves construction of concrete outlet structures and pipe networks in the Cobbs Creek basin just prior to the creek’s confluence with the James River. After the structures and pipes are placed, an earthen dam is planned for construction. The last phase is dam structure stabilization with vegetation, clearing the reservoir bottom, and allowing water to rise in the cleared reservoir space to create a withdrawal pool.
2. Virginia Water Protection Individual Permit No. 05-0852 (“VWP Permit”) was originally issued to Cumberland County with an effective date of October 12, 2007 and expiration date of October 12, 2022. Subsequently, a minor modification for change of ownership to Henrico County was approved on September 14, 2010.
3. DEQ approved additional minor and major modifications on November 27, 2012, August 1, 2013, March 7, 2014, December 3, 2015, and May 31, 2019. The VWP Permit authorizes the following activities: a) the permanent impacts to 80,792 linear feet of stream (including inundation of 78,644 linear feet of stream and fill or excavation of 2,148 linear feet of stream [100 feet of which are located at the Swift Island Compensation Site]), 30.99 acres of wetlands (including inundation of 19.40 acres of nontidal, palustrine forest wetlands, 6.25 acres of nontidal, palustrine scrub-shrub wetlands, and 4.26 acres of nontidal, palustrine emergent wetlands; fill or excavation of 0.44 of an acre or nontidal, palustrine forest wetlands; conversion of 0.61 of an acre of nontidal, palustrine forest wetlands by fill or excavation; and conversion of 0.03 of an acre of nontidal, palustrine scrub-shrub wetlands by fill or excavation), and 4.60 acres of open water (including inundation of man-made open water or beaver ponds) for constructing the reservoir dams and associated structures; filling of Cobbs Creek Reservoir to a normal pool elevation of 345 feet above mean sea level; stabilizing reservoir banks; installing underground utility lines and a James River intake; relocating existing underground utility lines; and providing compensatory mitigation; b) The temporary impacts to streams and wetlands (including fill or excavation of 1,924 linear feet of tributary streams; fill or excavation of 0.02 of an acre of nontidal, palustrine scrub-shrub wetlands; fill or excavation of 0.15 of an acre of nontidal, palustrine emergent wetlands; and excavation of 25,000 square feet of streambed in the James River) for installing underground utility lines; relocating existing underground utility lines; stabilizing reservoir banks; constructing a temporary coffer dam; and installing a James River intake; c) the temporary use of mechanical equipment in surface waters when conducted according to the permit conditions; d) the relocation to a new utility corridor or replacement of existing overhead utility lines within the same existing utility corridor, including removal of vegetation and disturbance of the ground surface to the minimum extent necessary for new or expanded borings; e) the withdrawal of surface water from the James River, not to exceed a maximum daily withdrawal volume of 150.0 million gallons; and f) surface water impacts resulting from compensation site-construction activities.

4. DEQ is the VSMP authority for the Project.
5. Henrico County is both an owner and operator for the Project, and JV is an operator.
6. 2019 VPDES Permit coverage was issued to JV with an effective date of July 1, 2019 and expiring June 30, 2024 for discharge of stormwater associated with construction activities at the Project. JV was previously approved for 2014 VPDES Permit coverage effective July 1, 2014 and expiring on June 30, 2019. Henrico County also obtained similar VPDES Permit coverage for the same term.
7. The 2014 VPDES Permit allowed and the 2019 VPDES Permit allows JV to discharge stormwater associated with construction activities from the Property to the James River and Cobbs Creek in strict compliance with the terms of the 2014 and 2019 VPDES Permits.
8. Due to the lengthy construction timeline and size of the construction area, DEQ staff conducted a series of VWP Permit inspections associated with this enforcement action, including on March 7, June 19, July 12, August 17 and September 7, 2018; February 6, March 13, June 21, October 3, 2019 and October 22, 2020. VPDES Permit inspections were conducted on July 24, September 23, October 18 and December 10, 2019, and January 23, 2020. During all of the inspections, Henrico County and JV representatives accompanied DEQ staff.
9. During the September 7, 2018 inspection, DEQ staff observed that the SWPPP did not record when concrete washout repairs were made. The JV made corrections on September 24, 2018 after it became aware of the SWPPP error.

2014 VPDES Permit Part II(G)(1) states in part: “The operator shall implement the corrective action(s) identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.”

2014 VPDES Permit Part II(B)(4)(g) states in part: “The operator shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: . . . Measures taken to address any evidence identified as a result of an inspection required under Part II F.”

10. During September 7, 2018 inspection, DEQ staff observed large deposits of sediment in Sediment Basin 1A1. After September 7, 2018, there were at least eleven (11) days of significant rainfall, resulting in at least 5.1 inches of rain. Sediment was removed on October 4, 2018.

9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

2014 VPDES Permit Part II(E)(1) states in part: “All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II F identifies a control measure that is not operating effectively, corrective action(s) shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

11. During the September 7, 2018 inspection, DEQ staff observed that sediment basins were installed onsite prior to obtaining approval to begin land disturbance by the Virginia Stormwater Management Program (“VSMP”) authority. The JV reported to DEQ that the sediment basins were installed as an emergency mitigation measure to address severe erosion from rainfall. The mitigation measures were later approved.

9 VAC 25-870-54(C) states: “A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.”

2014 Permit Part II(B)(1) states in part: “The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.”

2014 Permit PART II(B)(2) states in part: “The SWPPP must be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval.”

12. During the September 7, 2018 inspection, DEQ observed that the channel for Sediment Basin 1A1 was not stabilized and feeding into the sediment basin. After September 7, 2018, there were at least eleven (11) days of significant rainfall, resulting in at least 5.1 inches of rain. The JV was unable to make corrections until approximately October 2, 2018.

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

9 VAC 25-870-54(B), *supra* at para. 10.

2014 VPDES Permit Part II(E)(1), *supra* at para. 9.

2014 VPDES Permit Part II(E)(2) states in part: “If site inspections required by Part II F identify an existing control measure that needs to be modified or if an additional control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.”

13. During the September 7, 2018 inspection, DEQ staff observed rill erosion on several unstable slopes, a sediment basin and associated dam structure that were not stabilized, and the access road for the James River construction area was not stabilized. Inspections conducted on February 6, March 13, June 21, October 3, 2019 and October 22, 2020 indicate the same, similar and/or ongoing violations. The JV reported that erosion and sediment control problems are primarily attributable to extraordinary rainfall events.

9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

9 VAC 25-840-40(5) states: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”

9 VAC 25-840-40(7) states: “Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.

9 VAC 25-870-54(B), *supra* at para. 10.

2014 VPDES Permit Part II(A)(2)(c)(8) states: “A properly implemented erosion and sediment control plan... ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have been permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days...”

2019 VPDES Permit Part II(B)(2)(c)(8) states: “An approved erosion and sediment control plan, ‘agreement in lieu of a plan,’ or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of

disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . .”

2014 VPDES Permit Part II(E)(1), *supra* at para. 9.

2014 VPDES Permit Part II(E)(2), *supra* at para. 11.

2019 VPDES Permit Part II(F)(1) states in part: “The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

2019 VPDES Permit Part II(F)(2) states: “If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.”

VWP Permit Part I. C.10 states: “Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction. These controls shall be placed prior to clearing and grading activities and shall be maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized.”

14. During the September 7, 2018 inspection, DEQ staff observed that water from a sediment trap filter bag used for dewatering operations at the James River was cutting a channel into the slope and causing erosion and sediment discharge. Erosion and sedimentation controls and other best management practices were not installed and/or properly maintained to minimize secondary impacts to state waters. The JV reported that alleged deficiencies were corrected as soon as they could be addressed.

9 VAC 25-840-40(19)(a) states in part: “Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and

velocity requirements for natural or man-made channels: a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.”

2014 VPDES Permit Part II(E)(1), *supra* at para. 9.

VWP Permit Part I. C.10, *supra* at para. 12.

15. During the September 7, 2018 inspection, DEQ staff observed fuel leaking from the nozzle of a fueling tank. No secondary containment for the fuel tank or spill kit were observed. The JV took corrective action once the observation was made.

9 VAC 25-870-56 states: “A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to: ... B. The pollution prevention shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e)...1. Wastewater from washout of concrete, unless managed by an appropriate control.”

2014 VPDES Permit Part II(A)(4)(e)(1) states: “Prevent and respond to leaks, spills, and other releases including (i) procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Part III G.”

2014 VPDES Permit Part II(A)(4)(e)(2) states: “Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available).”

16. During the September 7, 2018 inspection, DEQ staff observed cement and grout washout from upslope drilling entering into the channel diversion. The JV reported that it removed the cement/grout and that it placed additional rock for filtration above the channel diversion as soon as it could be addressed.

9 VAC 25-870-56, *supra* at para. 14.

2014 VPDES Permit Part II(A)(4)(e)(5) states in part: “Pollution Prevention Plan: A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall: (5)... Direct concrete wash water into a leak-proof container or leak proof settling basin...”

2014 VPDES Permit Part II(A)(4)(e)(8) states: “Pollution Prevention Plan: A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall: (8)Address any other discharge from the potential pollutant-generating activities not addressed above...”

VWP Permit Part I.C.11 states in part: “All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters. Wet, excess, or waste concrete shall be prohibited from entering surface waters. Measures shall be employed at all times . . .”

17. During site inspections on March 7, 2018, June 19, 2018, July 12, 2018, August 17, 2018, and September 7, 2018, DEQ staff observed that sediment was discharged into Cobbs Creek at the outlet of the diversion channel and was flowing downstream approximately one mile to the confluence with the James River. The discharge resulted from inadequate, uninstalled and/or unmaintained erosion and sediment controls. Inspections conducted on February 6, March 13, June 21, and October 3, 2019 indicate the same, similar and/or ongoing violations. Reporting also indicates additional impacts to two un-named tributaries characterized as intermittent stream channels. The channels are adjacent to Cobbs Creek where construction activities to install a 72” pipeline were also occurring. Inspections indicate impacts to Cobbs Creek and the adjacent channels were variable based on site activity and conditions.

The JV reported that there was an extraordinary amount of rainfall that caused inundation of Cobbs Creek and backwater sedimentation deposit, resulting in challenging conditions to maintain site-wide compliance.

Date	Crest Height (ft.)
02/12/2018	20.58
09/18/2018	20.02
10/12/2018	19.13
12/22/2018	19.98
02/25/2019	21.27

National Weather Service, Cartersville Gauge. Data identifies events with crest height over nineteen (19) feet.

Va. Code § 62.1-44.15:20(A)(3) states in part: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to... alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-210.50(A) states in part: “Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall... discharge any pollutant into, or... otherwise alter the physical, chemical, or biological properties of state waters...”

VWP Permit Part II.Q.3 states in part: "Except in compliance with this VWP permit, it shall be unlawful for the permittee to... otherwise alter the physical, chemical, or biological properties of state waters..."

VWP Permit Part I.A states in part: "This permit authorizes the following impacts...1. The permanent impacts to 80.963 linear feet stream, 30.99 acres of wetlands, and 4.60 acres of open water..."

VWP Permit Part I.C.1 states: "The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in § 62.1-10(b) of the Code, 'beneficial use' means both in-stream and off-stream uses. In-stream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Off-stream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority."

VWP Permit Part I.C.9 states: "All excavation, dredging, or filling in surface waters shall be accomplished in a manner that minimizes bottom disturbance and turbidity. Turbidity levels downstream of any instream construction sites shall be minimized to the greatest extent practicable at all times."

VWP Permit Part I. C.10, *supra* at para. 12.

18. During site inspections on February 6, March 13 and June 21, 2019, DEQ staff observed that boundary flagging was not placed within 50 ft. of land disturbance activity. The JV reports that boundary flags were documented on May 21, 2019.

VWP Permit Part I.C.13 states: "All non-impacted wetlands, streams, open water, and designated upland buffers that are located within fifty feet of any project activities shall be clearly marked or flagged for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that no activities are to occur in these marked areas."

19. During the July 24, 2019 inspection, DEQ staff observed that Site inspection reports for June 20, 2019 and June 26, 2019 indicating that existing controls were failing to minimize pollutants in stormwater discharges from the Site, and modifications to the control measures were necessary. Corrective action was not implemented within 7 days of the inspections. The JV reported that the site received 5 ³/₄ inches of rain in June 2019 over a period of twelve (12) days, resulting in challenging conditions to maintain site-wide compliance. The JV reports that corrections were made by July 9, 2019 once weather allowed.

2019 VPDES Permit Part II(H)(1) states: "The operator shall implement the corrective actions identified as a result of an inspection as soon as practicable but no later than seven

days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.”

20. During the July 24, October 18, December 10, 2019; and January 23, 2020 inspections, DEQ staff observed unstable slopes, rill and gully erosion at various portions of the rim improvements area, and unstable slopes and conveyance channels in Borrow Area 4B exhibiting erosion. Subsequent inspections indicate similar and ongoing violations at or near Borrow Areas 1, 1A, 2, and other areas. DEQ staff consistently observed a failure to stabilize slopes, outfalls, channels, basins and other areas throughout the site during the term of inspections. The JV reported that the frequency and amount of rainfall resulted in challenging conditions to maintain site-wide compliance.

9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

9 VAC 25-840-40(7) states: “Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 VPDES Permit Part II(B)(5)(b)(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site.”

2019 VPDES Permit Part II(B)(2)(c) states: “An approved erosion and sediment control plan, “agreement in lieu of a plan,” or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: (1) Control the volume and velocity of stormwater runoff within the site to minimize soil erosion; (2) Control stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion; (3) Minimize the amount of soil exposed during the construction activity; (4) Minimize the disturbance of steep slopes; (5) Minimize sediment discharges

from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site; . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . .”

2019 VPDES Permit Part II(F)(1) states: “All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

21. During the July 24, 2019 inspection, DEQ staff observed silt fence with sediment accumulation greater than half the height of the fence in the rim improvement area and in Borrow Area 4B. In addition, staff observed onsite sediment basins 3 and 4, as well as the sediment trap and associated conveyance channel in Borrow Area 1, exhibited erosion and sediment deposition. Erosion and sediment controls, and other best management practices were not installed and properly maintained as required by the approved plans.

The JV addressed these alleged deficiencies by (1) hiring an independent engineer to write the Corrective Action Plan immediately after the Notice of Violation, (2) hiring an independent engineer to design additional emergency and corrective E&S measures, and (3) installing of additional E&S measures to maintain compliance and protect public health and the environment.

9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

2019 VPDES Permit Part II(F)(1), *supra* at 12.

22. On November 28, 2018, NOV No. 2018-09-PRO-201 (VWPP) was issued, describing the observations in Paragraphs C (8) – (17), herein. On August 14, 2019, NOV No. 2019-07-PRO-204 (Construction Stormwater) was issued, describing the observations in Paragraphs Section C (18) – (20), herein.

DEQ staff and the Responsible Parties communicated regularly to monitor corrective action at the Property. Additional compliance visits were conducted by DEQ to specifically discuss the NOVs, progress toward compliance, and enforcement. The Responsible Parties initiated an independent evaluation of site compliance, providing regular reporting beginning in November 2018. Staff determined that sufficient corrective action was taken

to warrant no further action for the violations described in Paragraphs C (8) – (16) and (18) – (21).

23. A Corrective Action Plan (“CAP”) was developed to address impacted water resources resulting from the land disturbing activities described above in Paragraph C(17). The CAP describes common remediation strategies to restore impacted areas to their original condition except where conversion is part of a permitted impact. The goal of these measures is to restore the function and water quality benefits to preconstruction condition. The CAP also describes monitoring requirements with success criteria to ensure installed measures remain in place and are effective. The CAP is incorporated by reference as part of Appendix A of this Order.
24. State Waters Affected include the James River, Cobbs Creek, Un-named Tributary (“UT”) to Cobbs Creek – James River Basin (Middle). During the 2018 305(b)/303(d) Water Quality Assessment Integrated Report, the James River was considered a Category 5A waterbody, meaning “A Water Quality Standard is not attained. The water is impaired or threatened for one or more designated uses by a pollutant(s) and requires a TMDL [“Total Maximum Daily Load”].” The segment is impaired of Recreation Use due to E. coli exceedances and impaired of the Fish Consumption Use due to a Virginia Department of Health Advisory for poly-chlorinated biphenyls. The Wildlife Use and Aquatic Life Use are fully supporting. Cobbs Creek and its tributaries were not assessed for any designated use; therefore, the streams are considered Category 3A waterbodies. The site is located in the Chesapeake Bay watershed. The Chesapeake Bay TMDL was approved by the U.S. Environmental Protection Agency (“EPA”) on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and submerged aquatic vegetation criteria in the Chesapeake Bay and its tidal tributaries. The James River, Cobbs Creek, and perennial tributaries are considered Tier 2 waters. Intermittent tributaries are Tier 1 waters.
25. James River, Cobbs Creek, and the Un-named Tributary (“UT”) to Cobbs Creek are surface waters located wholly within the Commonwealth and are “state waters” under the State Water Control Law.
26. The Department has not issued coverage under any permit or certificate to Henrico County or JV for this Project other than under the 2014 VPDES Permit, 2019 VPDES Permit, and Virginia Water Protection Permit.
27. Based on the foregoing information, the Board concludes that the Responsible Parties violated Va. Code §§ 62.1-44.15:20(A) and 15:34; 9 VAC 25-210-50(A); 9 VAC 25-840-40(1), (5), (7), (11) & (19); 9 VAC 25-840-60(A); 9 VAC 25-870-54(B)&(C); 9 VAC 25-870-56; and the associated permit requirements referenced above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders:

1. Henrico County, through JV, to perform the actions described in Appendix A of this Order; and
2. Henrico County and JV pay a total civil charge of **\$114,368**, within thirty (30) days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Responsible Parties shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department is required to refer collection of moneys due under this Order to the Department of Law, the Parties shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Responsible Parties for good cause shown, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Responsible Parties admit to the jurisdictional allegations, and agree not to contest, but neither admit or deny, the findings of fact and conclusions of law contained herein.
4. The Responsible Parties consent to venue in the Circuit Court of Henrico County for any civil action taken to enforce the terms of this Order. Responsible Parties acknowledge that any civil action taken by the Board to enforce the terms of this Order will be in the Circuit Court of Henrico County.
5. The Responsible Parties declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and

to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure of the Responsible Parties to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Responsible Parties shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Responsible Parties shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The Responsible Parties shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Responsible Parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the representatives of each of Henrico County and JV. Nevertheless, the Responsible Parties agree to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after completion of all of the requirements of the Order;
- b. The Responsible Parties petition the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Responsible Parties.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Responsible Parties from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Responsible Parties and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representatives certify that they are responsible officials authorized to enter into the terms and conditions of this Order and to execute and legally bind their respective party to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Responsible Parties voluntarily agree to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2021.

James Golden, Regional Director
Department of Environmental Quality

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Henrico County voluntarily agrees to the issuance of this Order.

Date: 7/29/2021 By: [Signature], Henrico County, John Vithoulkas, County Manager
Signing Official

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 29th day of
July, 2021, by John A. Vithoulkas who is
County Manager of Henrico on behalf of the locality.

Veta C. Herbaugh
Notary Public

7087379
Registration No.

My commission expires: 10/31/2024

Notary seal:

APPROVED AS TO FORM

[Signature]
COUNTY ATTORNEY



MEB Haymes Joint Venture LLC voluntarily agrees to the issuance of this Order.

Date: 7-27-21 By: , Project Executive
MEB Haymes Joint Venture LLC Signing Official

Commonwealth of Virginia
City/County of Pittsylvania

The foregoing document was signed and acknowledged before me this 27th day of
July, 2021, by Charles O Haymes, Jr who is
Project Executive of MEB Haymes Joint Venture LLC on behalf of the
company.


Notary Public

7242053
Registration No.

My commission expires: 5/31/2025

Notary seal:

William James Shelhorse
NOTARY PUBLIC
Reg. # 7242053
Commonwealth of Virginia
My Commission Expires 5/31/2025

APPENDIX A SCHEDULE OF COMPLIANCE

1. Responsible Parties shall immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted by Permit or is currently being addressed through the CAP.
2. Responsible Parties shall fully complete the requirements specified in the Corrective Action Plan (“CAP”) for Cobbs Creek Reservoir, dated January 11, 2021. Such CAP, inclusive of all component projects, schedules and appendices is hereby incorporated by reference and fully enforceable pursuant to the terms and conditions of this order.

Responsible parties shall submit all required documentation of Appendix A of this Order via regular mail and/or email to:

Enforcement Manager
Department of Environmental Quality
Piedmont Regional Office
4949A Cox Road
Glen Allen, Virginia 23060

Jefferson.Reynolds@DEQ.Virginia.gov

VWP Compliance Manager
Department of Environmental Quality
Piedmont Regional Office
4949A Cox Road
Virginia Allen, Virginia 23060

Jaime.Robb@DEQ.Virginia.gov